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# CHICAGO-KENT LAW REVIEW

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SYMPOSIUM EDITOR  
MARK D. ROSEN

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<p>This article analyzes the ongoing controversy over the installation of an eruv in Westhampton Beach. The author first provides an analytical description of the case with reference to other recent eruv controversies. Similar to arguments advanced in earlier eruv controversies, lawyers in the Westhampton case have taken recourse to the First Amendment, with proponents of the eruv relying on the free exercise clause, and opponents relying on the establishment clause. The article then proceeds to discuss the implications of this controversy for the larger issues of religion in the public sphere, as one of the critical issues emerging in all modern eruv controversies is the visibility of religion in the public sphere. The author further seeks to comment on the way the lawyers in the Westhampton Beach controversy used her scholarly work on the function of the eruv in ancient rabbinic law.</p>		
OPERATING ISLAMIC JURISPRUDENCE IN NON-MUSLIM JURISDICTIONS: TRADITIONAL ISLAMIC PRECEPTS AND CONTEMPORARY CONTROVERSIES IN THE UNITED STATES	<i>Mustafa R. K. Baig</i>	79

With the recent public furor in the United States regarding "Shari'a," studies into the content of Islamic jurisprudence concerning Muslims living under non-Muslim jurisdiction are more pertinent than ever in the U.S. context. As "anti-Shari'a" rhetoric has increased in fervency, informed input into the debates could go some way in correcting the peddled misconceptions. The paper begins by assessing how Muslim scholars viewed a Muslim's travel to and residence in non-Muslim lands, and the obligation to abide by the laws of the land. It will focus on the jihad (*siyar*) section in Islamic jurisprudence and the section on

judiciary (*qaḍāʾ/adab al-qāḍī*), and overlapping discussions of relevance pertaining to criminal law and financial law. The section on jihad assesses the issue of jurisdiction in terms of whether Islamic law can be applied to crimes committed in non-Muslim lands. A study of the section on judiciary will show how Islamic jurisprudence provides a means for Muslims to adjudicate among themselves in a non-Muslim polity. While much of the focus is on the Ḥanafī School of jurisprudence, comparisons will be made to other schools where possible, discerning areas of convergence and points of departure. Once this has been discovered, the actual intersection of Shariʿa and the American legal system will identify the fallacy of anti-Shariʿa propaganda. In doing so, I argue that a common sense approach is required that recognizes the accommodating principles in both legal traditions.

#### FAITH-BASED PRIVATE ARBITRATION AS A MODEL FOR PRESERVING RIGHTS AND VALUES IN A PLURALISTIC SOCIETY

*Michael J. Broyde*

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This article discusses private arbitration in religious and values-oriented communities. Using contract law as the foundation for arbitration law, religious arbitration panels can function almost like courts so long as the government can assure basic fairness and proper procedures, while allowing the parties to resolve their private dispute as the parties wish. This article explains that to be enforced, these private courts must meet the procedural requirements set by the Federal Arbitration Act, but American arbitration law is not generally concerned with the substantive law used by these tribunals, although this article recommends practices that religious tribunals ought to adopt as best practices. Consensual arbitration under religious auspices of private disputes ought to be allowed to flourish, as it is consistent with the historic policies of religious freedom in the United States.

#### BETWEEN LAW AND RELIGION: PROCEDURAL CHALLENGES TO RELIGIOUS ARBITRATION AWARDS

*Michael A. Helfand*

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This Article explores the unique status of religious law as a hybrid concept that simultaneously retains the characteristics of both law and religion. To do so, the Article considers as a case study how courts should evaluate procedural challenges to religious arbitration awards. To respond to such challenges, courts must treat religious law as *law* when defining the contractually adopted religious procedural rules, but treat religious law as *religion* when reviewing precisely what the religious procedural rules require. On this account, constitutional and arbitration doctrine combine to insulate religious arbitration awards from judicial scrutiny even on procedural grounds, leaving courts to confirm religious arbitration awards without knowing whether the arbitrators complied with the contractually required procedural safeguards. This outcome—emblematic of the Janus-faced nature of religious law—is good reason to reevaluate how U.S. law treats religious law, encouraging us to de-mystify religious law by seeing it more like law and less like religion.

#### RELIGIOUS LAW, FAMILY LAW AND ARBITRATION: SHARIʿA AND HALAKHA IN AMERICA

*Mohammad H. Fadel*

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The possibility that Muslims might use private arbitration as a forum in which their family law disputes could be settled according to the principles of Islamic law has generated substantial controversy, with one liberal democracy, Canada, even taking affirmative steps to insure that religious-based arbitration of family law disputes are denied legal recognition. This paper argues that such moves are ill-considered. From the perspective of political liberalism, the arbitration of family law disputes within a framework of religious law, provided that the arbitration is subject to review by a public court for conformity with public policy, is an ideal tool for deepening and broadening liberal political values such as religious freedom and gender equality within an overall recognition of the legitimacy of a limited amount of pluralism in family life.

## STUDENT NOTES

### OPPRESS ME NO MORE: AMENDING THE ILLINOIS LLC ACT TO PROVIDE ADDITIONAL REMEDIES FOR OPPRESSED MINORITY MEMBERS

*Paul T. Geske*

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The limited liability company (LLC) has become the preeminent choice of entity for small and midsize businesses, but it suffers from some of the same problems as its older cousins, the close corporation and the partnership. One such problem is oppressive conduct directed at the minority in interest. This article examines claims of oppression brought by members of limited liability companies, with a special focus on the Illinois Limited Liability Company Act (ILLCA). The ILLCA only provides one remedy for oppression—dissolution and wind-up of the LLC. This sole remedy may be inadequate, given that courts have historically been reluctant to order dissolution, and oppressed members may prefer a less harsh remedy. The oppression provision of the ILLCA looks even barer when contrasted with the statutory remedies available to shareholders of close corporations. The Illinois Business Corporation Act (IBCA) offers oppressed shareholders a nonexhaustive list of twelve different remedies. This article argues that, from a policy standpoint, oppressed members of LLCs are just as vulnerable as their oppressed shareholder counterparts, and the ILLCA should be amended to clarify members' rights and provide greater protection through additional remedies. In the absence of an amendment, courts should nonetheless look to the IBCA for guidance and be willing to craft equitable remedies for oppression. Greater protection and well-defined legal rights will make investors and business-owners feel more secure, and draw business to Illinois.

### THE LEGAL QUAGMIRE OF IRC § 501(c)(4) ORGANIZATIONS AND THE CONSEQUENTIAL RISE OF DARK MONEY IN ELECTIONS

*Daniel C. Kirby*

223

Section 501(c)(4) organizations have recently become a hot topic with respect to campaign finance. Following the 2010 Supreme Court case, *Citizens United v. Federal Election Commission*, the number of IRC § 501(c)(4) organizations ballooned in number, and the amount of money flowing through § 501(c)(4) groups increased 2390 percent from the 2008 election cycle to the 2012 election cycle. This essay explores the dangers to the campaign finance system of the substantial increase in spending by IRC § 501(c)(4) organizations. The foundational claim of this essay is that IRC § 501(c) is in need of a statutory and regulatory overhaul to limit the amount of influence dark money has on election outcomes. The crux of this essay's proposed amendments to the Treasury regulations is to create clearer guidelines for tax-exempt groups to abide by and to force campaign finance money to flow through the proper channels and receive oversight from the proper regulatory agency.

### THE NEED TO CRIMINALIZE REVENGE PORN: HOW A LAW PROTECTING VICTIMS CAN AVOID RUNNING AFOUL OF THE FIRST AMENDMENT

*Adrienne N. Kitchen*

247

Revenge porn occurs when someone posts sexually explicit images of their former paramour on the web, often with contact information for the victim's work and home. There are thousands, perhaps tens of thousands, of victims. Victims lose or quit their jobs; they are harassed by strangers; some change their name or alter their appearance. Some victims resort to suicide; others are stalked, assaulted, or killed. Civil suits fail to remove the images or deter perpetrators. Current criminal laws are insufficient in several common instances. These shortcomings mean there is a need to criminalize revenge porn.

Revenge porn is obscene and falls under a categorical exception to free speech. Even if revenge porn were not deemed obscene, a sufficiently clear law would avoid running afoul of the First Amendment. This article provides a model statute and a checklist to avoid Constitutional concerns. The government has a compelling interest in protecting privacy and in protecting

individuals from harm. The time is ripe to protect privacy, particularly the right to keep personal sexual behavior private when the sole purpose of disseminating images and information regarding a person's sexual behavior is to harass or humiliate.

LEVERAGING PREDICTIVE POLICING  
ALGORITHMS TO RESTORE FOURTH  
AMENDMENT PROTECTIONS IN  
HIGH-CRIME AREAS IN A POST-  
WARDLOW WORLD

*Kelly K. Koss*

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Rapid technological changes have led to an explosion in Big Data collection and analysis through complex computerized algorithms. Law enforcement has not been immune to these technological developments. Many local police departments are now using highly advanced predictive policing technologies to predict when and where crime will occur in their communities, and to allocate crime-fighting resources based on these predictions.

Although predictive policing technology has an array of the potential uses, the scope of this Note is limited to addressing how the statistical outputs from these technologies can be used to restore eroded Fourth Amendment rights in alleged high-crime areas. As the use of sophisticated predictive policing software becomes more widespread, courts will need to address how the statistical outputs from this technology factor into the reasonable suspicion calculus when a police officer performs a Terry stop in an alleged "high-crime" area. This Note argues that uniform standards and best practices must be developed to guide law enforcement's use of predictive policing software, and that this software should be leveraged as a tool to help restore eroded Fourth Amendment rights.

BACK TO THE FUTURE: HOW  
ILLINOIS' LEGALIZATION OF SAME-  
SEX RELATIONSHIPS RETROACTIVELY  
AFFECTS MARITAL PROPERTY  
RIGHTS

*Eric J. Shinabarger*

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Until 2011, Illinois viewed same-sex relationships as "against public policy" and refused to recognize any same-sex civil union or marriage. However, many Illinois residents traveled to progressive jurisdictions in order to enter into legal same-sex relationships. Afterwards, they returned to their lives in Illinois and lived together as married couples despite Illinois' lack of recognition.

When Illinois legalized same-sex civil unions in 2011 and same-sex marriages in 2014, it immediately flipped a switch and began retroactively recognizing same-sex relationships entered into in other jurisdictions. While this prevents same-sex couples from being forced to jump through hoops to re-legalize their relationships, it also presents a problem: When did these happy couples begin acquiring marital property? This question becomes extremely important when they are no longer a happy couple. In Illinois, all property acquired after a marriage is presumed to be marital property and is subject to equitable distribution upon the disillusion of marriage. Illinois could retroactively find that the couple began acquiring marital property the moment they entered into their relationship outside of Illinois despite the fact that Illinois did not recognize the marriage and the marriage had no legal effect. On the other hand, Illinois could start the marital property clock on the moment the same-sex legislation became effective even though the couples intended for their relationship to be binding and held themselves out to that effect. This article discusses the advantages and disadvantages of each point of view and analyzes the effects of each approach.